

## **REMARKS**

### **Request For Withdrawal of Finality**

In the Office Action issued April 12, 2010, only claims 1, 3, 5, 9-11, and 30-37 were rejected. Claims 2, 7, 8, and 38 were merely objected to, and claims 6 and 14-29 were withdrawn from consideration.

In the Reply filed July 12, 2010, claim 1 was amended to incorporate claim 2 which was cancelled. Thus, claim 1 was amended to define R<sup>1</sup> as Hal, NO<sub>2</sub>, CF<sub>3</sub>, COOH, COOR or H. Also, as discussed further below, an obvious typographical error was introduced into claim 1.

Claim 38 was not amended in the Reply filed July 12, 2010. Furthermore, although claim 38 depends from claim 1, the amendment to claim 1 whereby the feature of claim 2 was incorporated, did not change the scope of claim 38. Claims 38 already defined R<sup>1</sup> as Hal, NO<sub>2</sub>, CF<sub>3</sub>, COOH, COOR or H.

In the Final Office Action issued September 9, 2010, claims 1 and 38 are both rejected. However, these rejections constitute new grounds of rejection not necessitated by applicants' amendments.

As noted above, by the amendments filed July 12, 2010, claim 1 was amended to incorporate the recitation of claim 2. Thus, pending claim 1 corresponded to prior claim 2 rewritten in independent form. But, in the first Office Action, no rejection was made against claim 2. Thus, the amendment to claim 1 did **NOT** necessitate a new rejection. Any such rejection could have been made against prior claim 2.

Similarly, the amendments no change was made to the scope of claim 38 by the amendments filed July 12, 2010. Thus, the new rejection of claim 38 was necessitated by any amendment made by applicants.

It appears that the Examiner's basis for making the Office Action **Final** (see the middle of page 2 of the Office Action) is due to a typographical error in claim 1, i.e., the inclusion of the formula of compound 477 from Renhowe et al. (WO 03/082272). However, this is not an amendment to the claim, but clearly a typographical error. In claim 1 as presented in the Reply filed July 12, 2010, the formula of compound 477 was not underlined to indicate that it was being inserted into the claim. Moreover, claim 1 expressly states that

what is being claim is a compound of Formula I. The claim does not refer to the formula of compound 477 and does not state that this compound is being claimed. The presence of the formula of compound 477 is simply a typographical error and is not part of the claimed subject matter. This typographical error is corrected by the above amendment.

In view of the above remarks, it is respectfully submitted that the new grounds of rejection presented in the Office Action of September 9, 2010 were not necessitated by applicants' amendments. Withdrawal of the finality of the September 9, 2010 Office Action is respectfully requested.

#### **Amendments**

As mentioned above, claim 1 is amended to correct an obvious typographical error. In addition, the claim 1 is amended to define R<sup>3</sup> as Hal or CO-NHR. Entry of the amendment is respectfully requested.

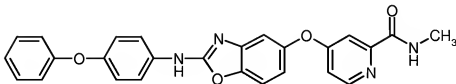
#### **Restriction Requirement**

Applicants are filing herewith a Petition for withdrawal of the Restriction Requirement.

#### **Rejection under 35 U.S.C. §102(e) in view of Renhowe et al.**

Claims 1, 3, 5, 9, 10, and 30-37 are again rejected under 35 U.S.C. §102(e) as being anticipated in view of Renhowe et al. (WO 03/082272). The rejection is respectfully traversed.

Specifically, the rejection refers to the compound 477 on page 96:



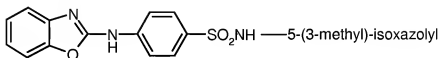
This compound does not anticipate the claimed invention as recited in claim 1. Furthermore, although the prior version of claim 1 had a typographical error, i.e., the formula representing compound 477 of Renhowe et al., the claim did not refer to this formula or indicate that this formula was part of the claimed subject matter.

In view of the above remarks, it is respectfully submitted that the disclosure of Renhowe et al. fails to anticipate applicants' claimed invention. Withdrawal of the rejection is respectfully requested.

**Rejection under 35 U.S.C. §102(b) in view of El-Gaby et al.**

Claims 1, 3, 9, 10, and 30-35 are again rejected under 35 U.S.C. §102(b) as being anticipated in view of the article by El-Gaby et al. (2002). The rejection is respectfully traversed.

The rejection refers to the following compound disclosed by El Gaby et al. (2002):



See compound 16b at page 409. Thus, this compound exhibits an isoxazolyl group substituted by methyl. This compound does not anticipate applicants' invention.

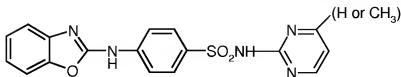
Compare applicants' Y group which is phenyl or a monocyclic aromatic heterocycle having 1 to 4 N, O and/or S atoms and which is substituted by 1-4 R<sup>3</sup> groups, wherein R<sup>3</sup> is Hal or CO-NHR.

In view of the above remarks, it is respectfully submitted that the disclosure of El-Gaby et al. (2002) fails to anticipate applicants' claimed invention. Withdrawal of the rejection is respectfully requested.

**Rejection under 35 U.S.C. §102(a) in view of El-Gaby et al.**

Claims 1, 3, 5, 9, 10, and 30-38 are again rejected under 35 U.S.C. §102(a) as being anticipated in view of the article by El-Gaby et al. (2004). The rejection is respectfully traversed.

The rejection refers to the following compounds disclosed by El Gaby et al. (2004):



See compounds 9a and 9b at page 329. However, these compounds do not exhibit a Y group which is substituted by 1-4 R<sup>3</sup> groups, wherein R<sup>3</sup> is Hal or CO-NHR. Compare Formula I of

applicants' claim 1.

In view of the above remarks, it is respectfully submitted that the disclosure of El-Gaby et al. (2004) fails to anticipate applicants' claimed invention. Withdrawal of the rejection is respectfully requested.

**Rejection under 35 U.S.C. §103(a) in view of Renhowe et al. and Lind et al.**

Claim 11 is rejected under 35 U.S.C. §103(a) as being obvious in view of Renhowe et al. (WO 03/082272) and Lind et al. (US 6,579,857). The rejection is respectfully traversed.

The rejection refers to the prior anticipation rejection based on Renhowe et al. and asserts that it would be obvious to formulate a composition as a kit consisting of separate packs of the compound of Renhowe et al. and a further medicament active ingredient.

As noted above, the compound of Renhowe et al. does not anticipate applicants' claimed genus of compounds. Thus, formulating the compound as a kit as described in the rejection would not render obvious the subject matter of applicants' claim 11.

In view of the above remarks, withdrawal of the rejection is respectfully requested.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,

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